

May 1, 2001

**METRO TELECONNECT COMPANIES,  
INC.**

Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local  
Exchange Carrier

**ORDER GRANTING AUTHORITY  
TO PROVIDE LOCAL EXCHANGE  
SERVICE AS A RESELLER AND  
APPROVING SCHEDULE OF RATES  
AND TERMS AND CONDITIONS**

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Metro Teleconnect Companies, Inc. (Metro or Company) the authority to provide competitive local exchange service as a reseller in Verizon-Maine's service area, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt Metro from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On January 23, 2001, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Metro filed a petition with the Commission requesting authority to provide local exchange telephone service as a reseller in Maine.

35-A M.R.S.A. §2105 requires, before we grant approval under section 2102 for another public utility to provide service, that we find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued

quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Metro the authority to provide local exchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Metro's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

## **II. SERVICE TERRITORY**

Metro has requested authority to provide local exchange service in all areas served by Verizon-Maine. It states that it will offer service only as a reseller of local exchange service provided by other authorized local exchange carriers (LECs) in that area. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. Metro's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

If Metro wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it may seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

## **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Metro to go into effect. Metro did not use the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms, conditions and rate schedules. Included in Metro's application is a request for a waiver from certain sections of Chapter 81. According to Metro, some of the provisions required by Chapter 81 are unduly burdensome for prepaid local exchange carriers. Metro specifically requests a waiver from the following sections of Chapter 81:

1. Section 2(J) "Due Date" and Section 9(B) "Disconnection Notice";
2. Section 6(B) "Form, Commission Review";
3. Section 7(A)(1) "Disconnection, Commission Consent";
4. Section 16 (A) "Record Maintenance"; and
5. Section 17 (H)(2) "Written Guidelines".

The Commission may grant a utility's request for exemption from one or more requirements of Chapter 81 for all or a portion of the utility's service territory upon finding that compliance would be unduly burdensome and that granting the request would not undermine the purposes of the rule. A request for exemption also must be in writing and contain a complete explanation and justification for the exemption; the suggested alternative procedure, if any; and a description of how the request would not undermine the purposes of the rule.

### **Discussion**

Request 1: Metro requests a waiver of this section because the current Commission rules are incompatible with the pre-paid service that the company plans to offer consumers in Maine. Under the company's current billing arrangements a customer will pay for a month of service in advance. For example, the customer will pay for 30 days of service commencing on April 1. On April 10 Metro will mail a bill to the customer and payment is due the following 1<sup>st</sup> (May 1). If the customer has not paid by 7 days following the due date (May 7) the customer will receive a disconnection notice from Metro. The customer then has 13 days to avoid suspended service, which will take place on May 20.

Because this is only one day shorter than the disconnection notice period required by Chapter 81, and because of the unique circumstances of pre-paid telephone service, we find this request is reasonable and we grant the waiver. The unique circumstances of the Metro's pre-paid service and billing timeline also requires an exemption from Chapter 81, Section 9 (D) which prohibits disconnection until 30 days after the postmark on the bill and Chapter 870, Section 1(C) which is related to late payment charges. The company did not specifically request these waivers. Nevertheless, the Commission grants Metro a waiver from those sections as well for the same reason that we grant a waiver from Sections 2(J) and 9(B).

Request 2: Metro requests a waiver from the requirement of providing written confirmation to customers when special payment arrangements are made because it is "unduly burdensome," as Metro frequently makes special payment arrangements with its customers.

In discussing this request with the Company, Staff put Metro on notice that the lack of written confirmation of payment arrangements places Metro at risk if a customer were to make a complaint with CAD, i.e., the customer would be given the benefit of the doubt. The Company stated that it understands the risk and feels that the cost of providing the written confirmation outweighs the risk. Because the Company is aware of the risk and accepts it, we find this request is reasonable and we grant it.

Request 3: Metro requests a waiver of the provision in Chapter 81 that allows a company to initiate disconnection procedures if the customer has an undisputed overdue account of more than \$50. Metro's current policy, in effect in several states, is

to initiate disconnection procedures when a customer has an overdue amount of \$30 or more. Metro feels that its policy meets Chapter 81's goal of promoting fairness, considering that most of its customers have a history of non-payment.

The service that Metro offers to customers is pre-paid local service and the Company does not provide toll service. For that reason, the amount the customer could owe is limited<sup>1</sup>. Customers of this Company will not be in a position to generate a large overdue bill. We agree that Metro's policy does not violate the intent of Chapter 81 and therefore grant the waiver.

Request 4: Metro requests a waiver of the section of Chapter 81 that requires utilities to maintain records in the State of Maine. We agree that it would be unduly burdensome for a small company such as Metro to maintain office space in Maine. The Company states that its only offices are located in Pennsylvania and that is where it maintains all of its records, including its records of disputes. Should the Commission Staff or a customer require access to the records, the Company will be required to make the records available. We find this request is reasonable; therefore we grant the waiver.

Request 5: Metro requests a waiver of section 17(H)(2) of Chapter 81. As this section does not apply to telephone utilities, a waiver is unnecessary.

We find Metro's terms and conditions reasonable and we approve them. Nevertheless, if there is any conflict between a provision in Metro's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Metro's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Metro to go into effect.

#### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Metro's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

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<sup>1</sup> One month of service is less than \$50.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a “rural telephone company” as defined in 47 U.S.C. § 153(37), the “rural exemption” of 47 U.S.C. § 251(f) will apply. All of Maine’s independent incumbent local exchange carriers are “rural telephone companies.” A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement “is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . .”

If Metro executes an interconnect agreement(s) with an ILEC(s), it shall obtain approval of that agreement by this Commission.

## **V. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Metro must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Metro shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants Metro a waiver from the requirements of Chapter 210 of the Commission’s Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because Metro’s rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, Metro must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment, and such other information requested by the Commission.<sup>2</sup> If Metro resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, Metro shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity

## **VI. OTHER REQUIREMENTS**

Metro shall comply with all applicable rules of the Commission and statutes of the State of Maine.

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

**VII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Metro to provide competitive local exchange telephone service as a reseller in Verizon-Maine's service area; and,

2. Exempt Metro from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt Metro from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that Metro shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Metro or of any entity that owns more than 50% of Metro. Metro shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Metro shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Metro shall amend its rate schedules and terms and conditions to reflect any change in identity; and,

4. Order that Metro's proposed terms and conditions and rate schedules (pages 1-25), attached to this Order, shall be effective on the date of this Order; and,

5. Grant a waiver for items 1-4 of Metro's January 23, 2001 request for a waiver; and,

6. Order that Metro shall comply with all applicable rules of the Commission.

Dated at Augusta, Maine this 1<sup>st</sup> day of May, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.